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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,805	02/04/2004	Clay Fisher	Sony-05900	3337

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O'BANION & RITCHEY LLP/ SONY ELECTRONICS, INC.
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EXAMINER

DAYE, CHELCIE L

ART UNIT	PAPER NUMBER
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2161

MAIL DATE	DELIVERY MODE
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12/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/771,805

Applicant(s)

FISHER ET AL.

Examiner

Chelcie Daye

Art Unit

2161

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 November 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


APU MOFIZ
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's request as to whether it would aid claim interpretation if they specifically recited determining where the content is located, as well as specific information about what and where duplicates reside, can not be considered at this time. The discussed features have not been incorporated into the claim language and further search and consideration would be needed in order to determine if the features would in fact aid in the interpretation of the claim.

Applicant argues, Ohta does not analyze content, nor does Ohta have the need for "selectively transmitting confirmation for the request based on the analysis".

Examiner respectfully disagrees. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In particular, Satomi was relied upon for the disclosure of the argued limitation (see Office Action dated 9/12/07). Therefore, the combination of Satomi and Ohta were relied upon for the disclosure of the entire claim.

Applicant argues, Ohta does not teach responding to a request based on the presence of any duplicate or related content.

Examiner respectfully disagrees. Ohta states, "The permitted number of duplications represents the right to duplicate the content to another device up to that number of times. Note that the permitted number of duplications is a sum of two numbers that are permitted separately for duplications to a first type device and to a second type device. The first type device refers to a device that duplicates a content to a non-portable recording medium, and the second type device refers to a device that duplicates a content to a portable recording medium. As shown in FIG. 21, the permitted number of duplications in content information 1121 is "10 (first type: 5, and second type: 5)", which means that it is permitted to duplicate the content to a first type device up to five times, and to a second type device up to another five times... The flag indicating whether or not content duplication to an out-group device is permitted is set to either "OK" or "NG". When set to "OK", the flag indicates that duplication of the content to an out-group device is permitted. When set to "NG", on the other hand, the flag indicates that duplication of the content to an out-group device is prohibited. As shown in FIG. 21, the flag in this embodiment is set to "NG", which means that duplication of content 1122 to an out-group device is prohibited" (column 36, lines 7-29). The preceding excerpt discusses the permission to duplicate content from one device to another a certain number of times. Dependent upon the restricted number of times and the already stored number of duplicated content, determines whether more duplicated content can be added. If the restricted number for duplicated content has exceeded its threshold an "NG" flag is set to indicate prohibition of the addition of the content. However, if the restricted number for duplicated content has not exceeded its threshold an "OK" flag is set to indicate permission is granted. Therefore showing that based on presence of the duplicated content a positive or negative response is outputted. Even further, Ohta discloses, "When judging that the requested number of duplications is within the permitted number, update unit 1312 outputs an instruction to home server 1100 via communication unit 1305. The instruction is to have home server 1100 add the requested number of duplications "2 (first type: 1, and second type: 1)" to the permitted number of duplications stored in home server 1100, correspondingly to the content identifier "A-0001"... In response, home server 1100 updates the stored duplication restricting information 1152 included in content information 1153 (shown in FIG. 24B) by adding the requested number of duplications "2 (first type: 1, and second type: 1)" to the currently held permitted number of duplications. FIG. 30A shows the updated content information 1172 that includes duplication restricting information 1171" (column 49, lines 8-22). As understood from the citation above, after judging the received request and permission is granted, an update unit adds the requested duplications to the corresponding devices. Then a response is also sent to the stored duplication restricting information to update the content information in order to keep track of the currently held (i.e., available) permitted number of duplications. As a result, a full disclosure of the above-argued limitation has been provided.

Applicant argues, Ohta does not teach that duplicates of said specific content are retained across multiple devices configured for communicating with one another over a network.

Examiner respectfully disagrees. Ohta states "one aspect of the present invention provides a networked apparatus that belongs to a group and that is connected via a network to at least one device in the group and to at least one device out of the group. The networked apparatus: stores a content; receives, from a device, a duplication request for the content; judges whether the device is in the group or out of the group; and duplicates the content to the device if the device is judged to be in the group, and imposes restrictions on duplication of the content to the device if the device is judged to be out of the group" (column 1, lines 57-67) and "Content duplication management system 1000 is a system for receiving contents that are broadcast from a broadcast station or transmitted over a network, and for allowing the member devices of a group formed by AD server 100 to use the received contents. Hereinafter, a description is given of an example in which content duplication management system 1000 receives contents from a broadcast station" (column 34, lines 58-64). One of ordinary skill in the art would realize that a network itself is a communication system connecting two or more computers (i.e., devices) so that they can share resources (i.e., content). As understood from the preceding excerpts the present invention is a group of devices connected via a network in order to transmit and store duplication content. As such, a full disclosure of the above-argued limitation has been provided.

Applicant argues a skilled artisan would not be motivated to combine the two references of Satomi and Ohta in order to arrive at the present invention for the clear reason that the combination does not, in fact, arrive at the present invention.

Examiner respectfully disagrees. In response to applicant's argument that there is no motivation to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner fully believes that all of the claimed features as recited have been fully taught.